

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION

IN RE:) BK. NO: 24-40605-BTR
) BK: NO: 24-40608-BTR
REMARKABLE HEALTHCARE of) BK: NO: 24-40610-BTR
CARROLLTON; REMARKABLE) BK: NO: 24-40611-BTR
HEALTHCARE of DALLAS, LP;) BK: NO: 24-40612-BTR
REMARKABLE HEALTHCARE of)
FORT WORTH, LP; REMARKABLE)
HEALTHCARE, LLC;)
REMARKABLE HEALTHCARE of)
SEGUIN, LP)

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TRANSCRIPT OF PROCEEDINGS

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BE IT REMEMBERED, that on the 22nd day of March, 2024,
before the HONORABLE BRENDA T. RHOADES, United States
Bankruptcy Judge at Plano, Texas, the above styled and
numbered cause came on for hearing, and the following
constitutes the transcript of such proceedings as hereinafter
set forth:

CINDY SUMNER, CSR (214) 802-7196

I N D E X

PAGE

JON MCPIKE

DIRECT EXAMINATION

BY: Ms. Boydston

CROSS-EXAMINATION

BY: Mr. Carruth

LEON CHERNYAVSKY

DIRECT EXAMINATION

BY: Mr. Butler

CROSS-EXAMINATION

BY: Ms. Boydston

E X H I B I T I N D E X

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P R O C E E D I N G S

COURTROOM DEPUTY: Remarkable Healthcare of

Carrollton, LP, case number 24-40605, motion for joint

administration, motion for sanctions, and motion to pay

pre-petition salaries and wages. Remarkable Healthcare of

Dallas, LP, 24-40608. Remarkable Healthcare of Fort Worth,

24-40610. Remarkable Healthcare, LLC, case number 24-40611.

And Remarkable Healthcare of Seguin, LP, case number

24-40612. Amended motions for joint administration.

THE COURT: Appearances.

MS. BOYDSTON: Good morning, Your Honor. Liz

Boydston and Alexandria Rahn of Gutnicki LLP on behalf of the

debtor.

MR. SALITORE: Good morning, Your Honor. Marc

Salitore for the United States Trustee.

MR. BUTLER: Good morning, Your Honor. Lynn

Butler on behalf of Alleon Capital. And I believe Ms. Buffey

Klein is also on the line.

MS. THARPE: Good morning, Your Honor.

Whitney Tharpe with the United States Attorney's Office on

behalf of Health & Human Services. And Ashley Fenton with

Health & Human Services is also on the line.

THE COURT: Thank you.

MS. MILLIGAN: Layla Milligan out of the Texas

Attorney General's Office appearing on behalf of the Texas

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1 Health & Human Services Commission. Good morning.

2 THE COURT: Good morning. All right. Any
3 other appearances?

4 MR. KIN: Good morning, Your Honor. Richard
5 Kin on behalf of Regions Bank.

6 THE COURT: I'm sorry. I did not hear your
7 last name.

8 MR. KIN: Yeah, Kin, K-i-n, on behalf of
9 Regions --

10 THE COURT: Richard Kin, thank you. Okay.

11 MR. CHERNYAVSKY: Good morning, Your Honor.
12 Leon Chernyavsky from Alleon Capital.

13 THE COURT: Okay. Is that everyone?

14 MR. CARRUTH: Your Honor, Jeff Carruth on
15 behalf of the Kilgore landlords.

16 THE COURT: Okay. All right, Ms. Boydston.

17 MS. BOYDSTON: Good morning, Your Honor. This
18 is Liz Boydston, again, on behalf of the debtors. Today
19 we're here on docket number 3, the debtors' motion for
20 sanctions seeking the equitable remedies disgorgement from
21 Alleon.

22 At the May 19th hearing in the prior case the debtor
23 informed Alleon that its interest in the Medicaid accounts
24 receivable remained protected even with the implementation of
25 the QIPP Program and that Alleon remains having a first lien

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1 on all of the debtors' receivables. The evidence also showed
2 that Alleon had not only swept payroll portions of the
3 employee benefit contributions, but the U.S. Attorney and HHS
4 filed objections saying that Alleon had also swept Medicaid
5 receivables. Finally, this Court had reminded Alleon of the
6 assurances they had given to this Court regarding patient
7 lives, patient health and safety from the January 24th
8 hearing. And that the Court expected that the actions that
9 would put patient lives and care as the top priority. But
10 instead and despite all of these things, the next day on
11 March 20th Alleon still drained \$134,842.71 from the debtors'
12 accounts. And then yesterday, March 21st, post-petition,
13 Alleon improperly took an additional \$120,185.48 without
14 seeking from this Court thus in violation of the automatic
15 stay.

16 As of this morning, March 22nd, two days post-petition,
17 Alleon has not returned that \$120,185.48 that it took in
18 violation of the automatic stay. And in total is holding
19 \$1,072,045.91. The debtors did promptly inform Alleon of
20 their stay violation and requested an immediate return of the
21 improperly taken funds. But, again, as of this morning,
22 those funds have not been returned. Thus in addition to the
23 relief the debtors are requesting in their sanction motion,
24 we do ask that Alleon's willful violation of the automatic
25 stay be an additional cause for sanctions to be granted

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1 against Alleon.

2 At the conclusion of the March 19th hearing in the
3 prior case, counsel to debtors, myself, conferred with
4 counsel to Alleon, Ms. Buffey Klein, and invited a deal that
5 if Alleon would return the debtors' cash, at least enough to
6 make today's mandatory payroll by noon, the debtors would
7 delay any bankruptcy filing. Unfortunately no response was
8 made to that offer. Alleon's refusal to return the cash and
9 Alleon's continued taking of the debtors' cash after the
10 March 19th hearing forced the debtors to file their
11 bankruptcy cases and request this emergency hearing seeking
12 disgorgement from Alleon as an equity remedy under Section
13 105 in order for the debtors to quickly be able to pay their
14 employees which much be paid today by noon.

15 Instead of working with the debtors, Alleon appears
16 from its own objection filed last night to have spent the day
17 meeting with various government agencies, which explains why,
18 as Mr. McPike will testify today, that the debtors were
19 alerted late yesterday afternoon that the State of Texas is
20 sending out representatives to each of the debtors' four
21 facilities today to ensure that paychecks are delivered
22 timely, otherwise the State is taking over the facilities.

23 The relief requested today is critical. It's necessary.
24 And without this relief, there will be irreparable harm to
25 the employees, the patients, and the debtors' more than ten

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1 year business. Alleon and counsel for Alleon have refused to
2 fulfill the assurances they previously made to this Court.
3 And on top of that, Alleon has continued total disregard for
4 the welfare of the patients and employees. Allowing conduct
5 such as Alleon's here to go unpunished sets a precedence that
6 values dollars over cents -- and cents, excuse me, over the
7 lives, health, welfare, and safety of the patients, the
8 residents, and the employees to provide the care necessary to
9 keep those patients alive.

10 The debtors do request this Court to sanction Alleon
11 under Section 105 of the Bankruptcy Code for misleading the
12 Court about its care and concern for the patients and
13 residents, for the harm that is being occurred to the
14 patients and potentially to the employees if they are not
15 paid today. And most importantly for complete disregard of
16 human life and just caring about its bottom line. And
17 additionally for Alleon's willful violation of the automatic
18 stay.

19 Would the Court like me to start going into evidence,
20 or would you like me to wait for the others to make their
21 statement?

22 THE COURT: I'm just going to take opening
23 statements first before I hear any evidence.

24 MS. BOYDSTON: Okay. For all these reasons --

25 THE COURT: Is that the conclusion of your --

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1 MS. BOYDSTON: Yes, Your Honor.

2 THE COURT: Okay. Thank you.

3 All right. Anybody else wish to make an opening
4 statement in support of the debtors' position?

5 All right. Let me hear from all of the other parties.
6 Let's start with Alleon.

7 MR. BUTLER: Yes, Your Honor. Lynn Butler on
8 behalf of Alleon Capital. I'm somewhat taken back by the
9 opening, but let me explain.

10 The -- about 1:00 yesterday we found out that Regions'
11 sweep had not been turned off. We immediately contacted
12 Gordon Green who is counsel for Regions. And within I would
13 say about an hour and a half, those sweeps were reversed. So
14 120,185.48 was returned to the bank accounts by which they
15 were received. We notified Mr. Gordon -- I mean Mr. Green of
16 that to be returned. So that was not something we did
17 intentionally. The sweeps had not been turned off. We also
18 asked Regions Bank to make sure that they were turned off
19 permanently, and they are.

20 But as to the rest, if you had a chance -- and I know
21 we filed it late, Your Honor, but it's been an interesting 48
22 hours. If you had a chance to look at the response, those
23 first couple of pages kind of spell it out. What we should
24 be here today is on a cash collateral or a financing motion.
25 But there's nothing left in the estate to effectuate either

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1 one of those. Their sanctions motion, we pointed it out at
2 the last hearing. They point to no order for a Rule 11
3 Agreement that was broken. Now it's instead of the agreement
4 that was made at the dismissal, which we thoroughly disagreed
5 at the last hearing, now they're saying we made a comment
6 that we were concerned about the patients. Well, in that
7 vein, Your Honor, we were. And let me tell you what we got.

8 Over the last 48 hours, immediately after the hearing,
9 we reached out to our State Court Receiver candidate, Karen
10 Nicola, and asked if she would consider being a Chapter 11
11 Trustee. She confirmed she would. We then went to the
12 landlord and asked the landlord if he had a mechanism to help
13 take over operations. He's looking into it. Ms. Nicola gave
14 us names of operating companies in Texas that could move
15 quickly. Those research -- that research and discussions are
16 ongoing.

17 After that, Your Honor, based on years of experience
18 representing healthcare debtors, reached out to the
19 Department of Justice and HHSC. We spoke with Ms. Stark,
20 Ms. Fenton, and Daniel Wolf of CMS OIG to walk through our
21 financing facility to see if they had any concerns. And we
22 told them what we felt of the condition of the debtor.

23 Lastly, yesterday afternoon, I had an opportunity to
24 talk with Ms. Milligan. I've been on both sides of this
25 where patients are in imminent danger. Things have to work

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1 quickly. The day of the dismissal hearing, not the entry of
2 the order, the day of the dismissal hearing the debtors
3 should have been looking for a solution. And they haven't
4 looked for a solution. All they've done is waste time
5 throwing bombs at us. But the reality is this, and this is
6 the stark reality. The terms of that agreement were
7 misrepresented to the Court. That agreement wholly transfers
8 all operations, period. All of those receivables from March
9 1st forward belong to Wes Wharton. The only thing that the
10 agreement allows the debtor to encumber, if it needs
11 financing, is the operation accounts and its 5 percent fee
12 from Wes Wharton. But when they're bringing in roughly 1.3
13 to 1.5 million a month from all sources, that 5 percent is
14 not sufficient to repay existing debt of Remarkable, much
15 less support any additional financings.

16 And keep in mind, Your Honor, what the testimony was.
17 Wes Wharton paid them at the beginning of March \$985,000
18 after the last week in February where Alleon funded nearly
19 \$450,000. Their average take a month is 1.3 to 1.5. They
20 told you on Tuesday they're out of money. I don't know
21 what's going on. But financially this debtor has nothing
22 left. They can throw bombs at us, legally insupportable
23 bombs. But it's not solving the problem. And now the
24 problem has gotten so bad, I'm not sure it can be solved.

25 As to the motion itself, under Rule 11, as the Court

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1 pointed out, there's no identifiable violation Alleon
2 committed at all. We acted on a defaulted facility
3 post-dismissal, but not even until March 1st when we knew for
4 sure they no longer had a facility. As to 105, that's clear
5 and convincing standards. As (indecipherable word) as the
6 motion is, it's not -- it doesn't support any sanctionable
7 conduct in any way, shape, or form. And quite frankly, Your
8 Honor, if the Court felt that it truly did, we need to have a
9 live evidentiary hearing.

10 But with that, Your Honor, I deny the motion. We don't
11 oppose the wage motion. We don't know where the money is
12 going to come from. And, of course, we don't oppose the
13 joint administration.

14 THE COURT: Okay. All right. I'll hear
15 opening from any other party.

16 MR. CARRUTH: Your Honor, Jeff Carruth on
17 behalf of the landlords.

18 We don't oppose the wage motion, except to the extent
19 we put in our objection that there should be no salaries paid
20 to any of the McPike family at this point.

21 THE COURT: Okay.

22 MR. CARRUTH: We voiced some other concerns in
23 our motion -- our objection. But as to the wages, itself,
24 that's where we are.

25 THE COURT: All right.

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1 MR. SALITORE: Good morning, Your Honor. Marc
2 Salitore for the United States Trustee.

3 THE COURT: Yes, sir.

4 MR. SALITORE: I just very briefly wanted to
5 update Your Honor. Mr. Weisbart has agreed to serve as a
6 Subchapter V Trustee. Given the deterioration and the
7 debtors' apparent financial condition between the last set of
8 cases and this set of cases, the U.S. Trustee has asked
9 Ms. Boydston to support the eligibility of the debtors under
10 Subchapter V. Ms. Boydston has agreed to provide information
11 to support that eligibility. Given the immediacy of the
12 issues that we face today, we expect that to be resolved
13 within the next week.

14 The U.S. Trustee has also reached out concerning a
15 patient care ombudsman. Ms. Goodman, you may recall, served
16 in the last set of cases. Ms. Goodman has declined to serve
17 in these cases and we are in the process of trying to
18 evaluate a patient care ombudsman situation. All of that is
19 simply by way of background.

20 Thank you.

21 THE COURT: Thank you.

22 All right. Anyone else wish to make an opening?

23 All right. Since no one else wishes to make an
24 opening, Ms. Boydston, let's -- you may proceed. But let's
25 be clear about what we're doing for purposes of today. I do

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1 not have a motion in front of me for a motion to use cash
2 collateral. I have the joint administration, sanctions, and
3 payment of pre-petition wages. So first, why don't we start
4 with the pre-petition wage issue. And I'd like to understand
5 before you call your first witness how much it is that you
6 are looking for, totals, in order to keep your doors open and
7 take care of the patients for right now. Since this is an
8 emergency hearing, I'm only going to consider matters that
9 will require immediate attention. To the extent it can wait
10 for a more fulsome, live hearing, that's what we're going to
11 do. Okay.

12 MS. BOYDSTON: Yes, Your Honor.

13 MS. RAHN: Your Honor --

14 MS. BOYDSTON: Ms. Rahn is going to -- was
15 going to handle the wages.

16 THE COURT: Okay. Was somebody else going to
17 speak?

18 MS. RAHN: Yes, this is Ms. Rahn. I was going
19 to give you the amounts for the wages.

20 THE COURT: All right.

21 MS. RAHN: So what is immediately needed is to
22 fund payroll today is the \$635,679.28. And then for the stub
23 period of March 18th and 19th, which is also pre-petition,
24 there's an additional approximately \$105,389 for a total of
25 \$741,068.33.

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1 THE COURT: Okay.

2 MS. RAHN: So -- but what is absolutely needed
3 is the \$635,679.28. And without that number, we won't be
4 able to make payroll.

5 THE COURT: And how are you planning on -- do
6 you have 635,000?

7 MS. RAHN: No, Your Honor.

8 THE COURT: Okay.

9 MS. RAHN: Because our accounts have been
10 repeatedly swept.

11 THE COURT: I understand your position. But
12 my question is, I don't have a motion in front of me for use
13 of cash collateral. So I'm just trying to understand, if you
14 get Court authority to use -- I mean to pay the pre-petition
15 payroll, where's the money going to come from?

16 MS. RAHN: Your Honor, we are relying on the
17 sanctions motion and getting money back from the -- from
18 Alleon.

19 THE COURT: Okay. Am I missing something
20 here?

21 Even if you were to prevail, which I'm not saying you
22 will -- even if you were to prevail, isn't the,
23 quote/unquote, money you get back their cash collateral, or
24 is it not?

25 MS. RAHN: It arguably is not since they took

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1 so many -- well, yes, it is, but it also isn't because a lot
2 of the money they took constituted Medicare and Medicaid and
3 all of the other things that they weren't supposed to be able
4 to sweep.

5 THE COURT: So you're saying some of the money
6 was not cash collateral?

7 MS. RAHN: And we're also asking for the
8 authority to be able to use that money that we get back to
9 pay the wages motion.

10 THE COURT: Where are you asking for that?

11 MS. RAHN: The sanctions motion, but also in
12 the wages motion.

13 THE COURT: Okay. Can you tell me where in
14 the pleadings you --

15 MS. RAHN: I'm going to refer to Ms. Boydston
16 on the sanctions motion. She's more familiar with it.

17 MS. BOYDSTON: Yes, Your Honor. We filed the
18 sanctions motion specifically to request the authority to pay
19 employee payroll. And if you look at the sanction motion at
20 paragraph -- oh, it's in the employee wages. In the sanction
21 motion we asked to disgorge and in the employee wages motion
22 we asked for the authority to use the funds to pay for it.
23 So in the sanctions motion we ask for the disgorgement of the
24 money to be put in the operating account this morning. And
25 then additional relief that the Court deems just and proffer.

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1 We did not get any agreement on cash collateral. I have
2 requested the relief from cash collateral yesterday from
3 Mr. Butler and I got -- and Ms. Klein and I got no response
4 from Mr. Butler and Ms. Klein said that she would talk to her
5 clients and I received no response from them. And so it
6 would have to be ordered against them because of the
7 sanctions motion.

8 THE COURT: Okay. That's not what I'm asking.
9 I'm asking you where in your pleadings do you ask to use
10 their cash collateral, use the funds to the extent that
11 they're disgorged or returned by Alleon to pay the
12 pre-petition wages? I'm looking -- the issue is notice.
13 Okay. So can you show me where that is?

14 MS. BOYDSTON: It's in paragraph 45 of the
15 wages motion. Paragraph 45 of the wages motion, to avoid the
16 potential of such liability and because the (inaudible word)
17 obligation is not property of the debtors' estate, debtors
18 request that the Court order Alleon to disgorge at least
19 \$951,000 plus additional amounts Alleon improperly swept.
20 Such funds shall be returned to the debtors' operating
21 account by no later than when this hearing started. And
22 authorize debtors to remit those amounts to the appropriate
23 parties in the ordinary course of business.

24 THE COURT: Okay. Why is it not property of
25 the estate?

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1 MS. BOYDSTON: It is property of the estate.

2 THE COURT: Well, paragraph 45 says it's not
3 property of the estate.

4 MS. BOYDSTON: Oh, I don't know why that not
5 is in there, it must have been -- I do know we have been
6 literally working around the clock on this. That's a
7 mistake, I apologize. I don't know why it says that. I
8 don't know why it says, are not. It should say, are property
9 of the estate.

10 Your Honor, in order for the debtors to be able to make
11 payroll, just as was stated -- and I'm asking the Court to
12 take judicial notice of the March 19th hearing and all of the
13 testimony therein. In order to make the payroll, we have to
14 have the money that Alleon took. Mr. McPike --

15 THE COURT: Okay. I -- okay. I understand
16 you need the money. There's -- I think everybody understands
17 that. I'm just trying to understand the legal basis for
18 which the Court can grant that motion and then we'll take the
19 evidence in just a moment. But --

20 MS. BOYDSTON: I mean, part of the legal basis
21 is 105, Your Honor. And --

22 THE COURT: So --

23 MS. BOYDSTON: I'm sorry, go ahead. I
24 apologize.

25 THE COURT: You keep -- you may proceed.

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1 MS. BOYDSTON: Okay. So, and as this Court
2 knows, this is a Court of equity. And we are standing here
3 today, you know, (inaudible word due to flipping of paper in
4 the phone) irreparable harm if that happened. Mr. McPike
5 will testify that everything Mr. Butler said is absolutely
6 incorrect. And in our exhibits that we shared last night,
7 the email as requested, and then filed this morning just in
8 case, all of it bears a full signed Wes Wharton management
9 agreement. Every single thing that Mr. Butler is saying is
10 an incorrect reading of that management agreement with Wes
11 Wharton. They absolutely have a first lien on the
12 receivables. What he doesn't understand and what Mr. McPike
13 will testify to is that the debtors bring in more than a
14 million dollars a month. They bring in almost two million
15 and some months more than two million. Only one million of
16 that is Medicaid, which is the only thing that the Wes
17 Wharton QIPP Program does -- works with at all. That's it.
18 And I've attached a bunch of different exhibits. One from
19 the State of Texas QIPP Program so that everybody can
20 understand that QIPP only affects Medicaid. That's it.
21 Medicare is completely different.

22 So everything that the debtors --

23 THE COURT: Okay. Is counsel -- hold on. Is
24 counsel for Wes Wharton present?

25 MS. BOYDSTON: No. I could not get counsel

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1 for Wes Wharton to go on since they're in a hearing right
2 now. Trent Krienke is in a hearing right now.

3 THE COURT: Okay. So you are suggesting the
4 Wes Wharton contract only affects Medicaid --

5 MS. BOYDSTON: Yes.

6 THE COURT: -- receivables?

7 MS. BOYDSTON: Yes.

8 THE COURT: And --

9 MS. BOYDSTON: It affects Medicaid --

10 THE COURT: Hold on.

11 MS. BOYDSTON: All Medicaid receivables.

12 THE COURT: I'm just trying -- okay. I'm
13 trying to understand your position, so just one moment, okay.

14 You are suggesting that the Wes Wharton deal only
15 affects Medicaid receivables. All of the other receivables
16 belong to the debtor, generated by the debtor. Is that -- is
17 that your position?

18 MS. BOYDSTON: Kind of. Okay. Every single
19 receivable, period, belongs to the debtor. The Medicaid
20 receivables go through Wes Wharton because -- through the
21 QIPP Program. They come into Wes Wharton and then Wes
22 Wharton pays them over to the debtor, the Medicaid
23 receivables. And then based on monthly metrics, then gives
24 the debtors an increase and incentives if they meet certain
25 metrics of care. So the purpose of the QIPP Program is not

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1 to reduce the Medicaid receivables a SNF, a skilled nursing
2 facility receives. It's to increase it.

3 And on the exhibits that I attached, on Exhibit
4 Number -- Exhibit Number 10 is Wes Wharton's attorney, Trent
5 Krienke, stating in a public article that QIPP is critical
6 for nursing homes because Medicaid is the lowest rate in
7 Texas and the QIPP Program makes up for the shortfall by
8 giving incentives to any skilled nursing home that's in the
9 QIPP by increasing their Medicaid receivables.

10 So the argument and the truth is that Alleon's --
11 Alleon's collateral is increased, okay. Alleon gets the full
12 lien on all of the Medicare receivables and private pay,
13 which is what Alleon has swept. The million dollars plus
14 that Alleon has swept in 21 days, that is Medicaid --
15 Medicare and private pay receivables only. There is no
16 Medicaid in that because that is held up by the CHOW right
17 now, which is why Wes Wharton gave the line of credit to
18 compensate for that -- for those Medicaid receivables, which
19 as of today was more than a million dollars. And then there
20 should be another payment coming in next week, I think.
21 Mr. McPike will be able to tell us. Next week, I think, from
22 Wes Wharton for the rest of the month Medicaid receivables.
23 So the total that the debtors would have collected this month
24 is more than a million dollars which Alleon swept which is
25 Medicare and private pay only plus the \$900,000 that Wes

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1 Wharton has provided to replace the \$900,000 in Medicaid
2 receivables that the debtors would have collected but for the
3 CHOW.

4 In the docket Exhibit Number 7, the Wes Wharton
5 management agreement, I highlighted all of the different
6 things in there to counter what Mr. Butler is saying. They
7 simply just do not understand what the QIPP Program is. It
8 is -- there's no (indecipherable word) at all against a
9 lender taking a lien, or a mortgage, or a preexisting lien or
10 mortgage in any of the QIPP receivables because they are
11 Medicaid receivables only and they are not affected by the
12 Medicare anti-assignment law.

13 They are acting on mistake. They do not understand the
14 QIPP Program. And because of their mistake, they are going
15 to end up shutting the facilities down. It is imperative
16 that that money come back, go to the debtors' employees so
17 that they can take care of their patients. And we can sit
18 down and they can understand -- we'll sit down with
19 Mr. Krienke and have them -- have him explain it. Because
20 this is what almost every single SNF in Texas joins to
21 increase their revenue by 15 plus percent, depending on
22 census. And Mr. McPike testified on the 19th and will
23 testify again today that their census is increasing, which
24 means even more money for Alleon.

25 Can I call my first witness, or should I -- or can I

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1 clarify anything more for the Court before I call my first
2 witness?

3 THE COURT: You may call your first witness.

4 MS. BOYDSTON: Mr. McPike, can you please --

5 THE COURT: Again, let me tell you -- hold on.
6 I'm limiting you to only those issues that need to be
7 addressed today on an emergency basis, okay.

8 MS. BOYDSTON: Correct.

9 THE COURT: Which relates to your request for
10 wages -- the pre-petition wage motion, right? And everything
11 else we're going to take up at a different day after the --
12 after the parties have a little bit more notice and we can
13 have a more fulsome hearing.

14 MS. BOYDSTON: Can I get clarity on that,
15 because I'm trying to understand what that means? Because
16 without -- there is -- there's less -- there's less --
17 there's \$16,000 in the bank account. So if the Court is
18 not --

19 THE COURT: I thought there was 120,000?

20 MS. BOYDSTON: No. As of this morning when I
21 asked my client to please check and send me the AR, the check
22 register, the money had not been returned in there. So if
23 it's in there, it must be tied up in Regions.

24 THE COURT: Okay. Well, you all can sort that
25 out in just a moment. But you may --

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1 MS. BOYDSTON: It shows 120 --

2 THE COURT: As I've said --

3 MS. BOYDSTON: I understand that. My question
4 though is, what do I -- if we're not going to consider the
5 disgorgements, there is no money to pay it. And if there is
6 no money to pay it, then the State takes over the facilities
7 today. So if I can't address --

8 THE COURT: Again, if you -- I'll allow you to
9 go forward on the, quote/unquote, disgorgement. I frankly
10 don't see what their mistake is -- you know, I don't
11 understand the impact of your allegation that they are --
12 they don't understand or misunderstand the QIPP Program.
13 And, you know, we'll take that up. But I'm simply going to
14 take up only those matters that are absolutely necessary for
15 today. Anything else that can wait needs to wait until
16 everybody has more notice. So if that involves getting money
17 from Alleon through disgorgement or otherwise, I'll take --
18 I'll hear you. Again, I'm very concerned about the notice
19 issue, but we'll take that up too. But I'll hear your
20 evidence.

21 MS. BOYDSTON: Okay. The debtor -- okay.
22 Alleon has had notice, because I -- we -- I filed this motion
23 at least (inaudible word), so they had notice.

24 THE COURT: Well, there is no motion -- there
25 is no motion for use of cash collateral. I don't see one.

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1 MS. BOYDSTON: No, there isn't one.

2 THE COURT: And in bankruptcy --

3 MS. BOYDSTON: There isn't one.

4 THE COURT: Right. There you go. So we'll
5 take -- you say there's a paragraph in one of the -- you say
6 there's a paragraph in one of the pleadings that asks for
7 disgorgement and use of those funds. I -- I don't know that
8 that's sufficient, but I'll take a look at it and I'll hear
9 you in your closing. I'll hear your evidence now given that
10 you've already made your opening.

11 MS. BOYDSTON: Okay. Mr. McPike, please --
12 please take your mute off so that we can chat and so that the
13 Court can swear you in.

14 MR. MCPIKE: Yes, ma'am.

15 (The witness was sworn by the courtroom deputy.)

16 THE COURT: All right. Just so we're clear,
17 Mr. McPike, we're not chatting. This is a hearing in court
18 and you are testifying under oath. Do you understand that?

19 THE WITNESS: Yes, ma'am.

20 THE COURT: Thank you.

21 All right. You may proceed, Ms. Boydston.

22

23

24

25 (no omission)

1 JON McPIKE

2 The witness, having been duly sworn to tell the truth,
3 testified on his oath as follows:

4 DIRECT EXAMINATION

5 BY MS. BOYDSTON:

6 Q. Mr. McPike, can you please state your name for the
7 record.

8 A. Jon McPike.

9 Q. Can you please inform the Court what you do for the
10 debtors?

11 A. I'm the chief operating officer.

12 Q. How many employees do you have today?

13 A. 516 today.

14 Q. And today how much exactly do you need to be able
15 to pay the employees?

16 A. Today for payroll we would need \$635,679.28 of our
17 cash collections.

18 Q. And where are those cash collections?

19 A. Alleon is holding them.

20 Q. What are those cash collections that Alleon is
21 holding? What are the receivables that make them up?

22 A. Medicare payments, Medicare Advantage Plan
23 payments, and private pay payments.

24 Q. Did you hear Mr. Butler state earlier that the
25 debtors only make a million dollars a month?

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1 A. I'm sorry, could you repeat that?

2 Q. Did you hear Mr. Butler state earlier that the
3 debtors only make a million dollars a month?

4 A. I did hear that, yes.

5 Q. And is that true?

6 A. No, it's not.

7 Q. How much -- how much would the debtors have
8 collected through today if Alleon had not swept the funds?

9 A. Month to date, that would have been -- we would
10 have collected month to date, not including 3/20 and 3/21, we
11 would have collected so far 1.6 million 600 -- \$1,600,619.25.
12 And since then, I believe, there's another over 120,000, or
13 maybe even another 120 on top of that that would be on top of
14 that.

15 Q. So if -- if the \$120,000 is back in your account at
16 the end of this hearing, how much money does the debtors have
17 in their bank accounts right now?

18 A. If they added the 120 mil -- 120,000 back from
19 yesterday, we would have \$136,000 available to us of our cash
20 that we've collected.

21 Q. Before March 1st -- before March 1st, how much
22 was -- were you paying Alleon per month on your interest and
23 principal payments?

24 A. We were paying \$10,000 a week and then we -- Alleon
25 also swept approximately \$37,000 for legal fees.

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1 Q. So is it -- is it out of the ordinary that in three
2 weeks Alleon has swept more than a million dollars?

3 A. It's not out of the ordinary that they swept it.
4 It's out of the ordinary that they kept it and are not
5 returning it to operations.

6 Q. What does Alleon say -- have you requested the
7 money back?

8 A. Numerous times, yes.

9 Q. And why aren't they sending the money back?

10 A. Because they have a misunderstanding of the
11 agreement --

12 MR. BUTLER: Objection, Your Honor.

13 Objection, Your Honor. It's speculation.

14 THE COURT: Objection sustained.

15 Q. What is -- what is your understanding? Why do you
16 think that Alleon is not -- is not giving you the money back?

17 A. Well, Alleon has stated to us in a formal email
18 that they're not returning the money because they believe
19 their cash collateral no longer exists because they have a
20 misunderstanding of the agreement with Wes Wharton believing
21 that their cash collateral --

22 MR. BUTLER: Objection, Your Honor.

23 A. -- is gone and that belongs to Wes Wharton.

24 MR. BUTLER: Objection, Your Honor. The
25 agreement speaks for itself.

1 THE COURT: The Wes Morland (sic) agreement?

2 MR. BUTLER: Yes, Your Honor, Wes Wharton.

3 It's Wharton, Texas, Wes Wharton. Yes.

4 THE COURT: Okay. The agreement says what it

5 says. But he's simply testifying about his understanding.

6 I'm not sure about the relevance of that. But that's what

7 he's testifying about.

8 I'm going to overrule the objection, okay.

9 Q. Mr. -- Mr. McPike, can you -- do you have in front
10 of you Exhibit Number 7, the Wes Wharton agreement?

11 A. Yes, I do.

12 Q. Can you scroll through it and see if it is the
13 true, executed, and final document?

14 A. Yes, it is.

15 Q. Can you please go to page 12, Section 2.3.2?

16 A. Page 12 --

17 Q. I'm sorry, page 12, 2.3.3, apologies.

18 A. Yes, I'm there.

19 Q. Can you read the -- the -- right after, provided
20 however?

21 A. The manager may pledge a security interest in the
22 facility operating account as collateral for working capital
23 or HUD financing obtained in the manager or prime lessor's
24 name.

25 MR. BUTLER: Objection, Your Honor,

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1 completeness. If you look at the decretal Section 2.3 it
2 says, manager shall not pledge or provide a security interest
3 in any of the assets of the Hospital District provided,
4 however, the manager may pledge a security interest in the
5 facility operating account, as noted in our objection is
6 collateral. The facility operating account is used to fund
7 the operation. It doesn't get them anywhere.

8 THE COURT: Okay.

9 MS. BOYDSTON: May I continue, please?

10 THE COURT: You may.

11 Q. Okay. Who -- who was the manager in the agreement?

12 A. Remarkable Healthcare.

13 Q. And does this agreement define what the facility
14 operating account is?

15 A. I'm not sure.

16 Q. If I -- if I take you to -- to the provision of
17 this document that defines it, paragraph 6.1 -- I'm sorry,
18 paragraph 7.2, page 23, is it in there?

19 A. I'm scrolling. Page 23, yes.

20 Q. Do you -- is it true that the 7.2, the paragraph,
21 is what was added to in the March 19th hearing in your prior
22 case?

23 A. Yes.

24 Q. The highlighted portions are -- can you see the
25 highlighted portions?

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1 A. Yes.

2 Q. Do you see the first highlight, subject to a prime
3 in (inaudible word)?

4 A. Yes.

5 Q. Can you read the beginning of that sentence?

6 A. The prime (indecipherable word) account shall be
7 the sole and exclusive property of the Hospital District
8 subject to requirement by any lender or any mortgage
9 encumbering the facility.

10 Q. Is there already a lender encumbering these
11 facilities?

12 A. Yes.

13 Q. Who is that lender?

14 A. Alleon Capital Partners.

15 Q. Are there mortgages encumbering these facilities?

16 A. Yes.

17 Q. So have you spoken with Wes Wharton about Alleon's
18 lien on all of the assets encumbering these facilities?

19 A. Yes.

20 Q. Did you inform Alleon of the status of their liens
21 on these facilities after conversations with Wes Wharton?

22 A. Yes. And I even tried to set up a phone call
23 between the Wes Wharton counsel and Alleon principals and I
24 was told that would be a waste of time.

25 Q. So look at the next highlighted portion.

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1 A. Yes.

2 Q. Can you read -- can you read that highlighted
3 portion?

4 A. Manager and Hospital District shall develop a cash
5 management system that provides for transfer of ordinary
6 revenue from the deposit account to an (inaudible word)
7 account (inaudible words due to audio cutting out) full and
8 exclusive property of manager or its affiliates no less often
9 than weekly or more frequently if agreed to by the parties.

10 Q. And is that facility operating account the one that
11 has the Medicaid receivables in it?

12 A. It would have all of the receivables in it, yes.

13 Q. And who has a first lien on all of those
14 receivables?

15 A. Alleon does.

16 Q. Can you read the last (inaudible few words due to
17 shuffling of papers into the phone)?

18 A. Notwithstanding the full billing to secure the
19 payment and performance of Hospital District's obligation to
20 lender, the Hospital District hereby grants to manager a
21 continuing security interest and a lien upon the depository
22 account, the accounts and the proceeds thereof whether now
23 owned or hereafter created, acquired, or (inaudible word).

24 Q. Okay. And that word, depository account, can you
25 scroll back up to page 23 and --

1 A. Yes.

2 Q. -- tell us what that depository account is?

3 A. All total net revenue derived from the operation of
4 the facility shall be deposited in a designated account which
5 shall at all times be segregated from other funds of the
6 Hospital District, that is the depository account. The
7 depository account shall be the sole and exclusive property
8 of the District subject to requirements by any lender or
9 mortgage encumbering the facility.

10 Q. Okay. So what is your understanding from your
11 speaking with Wes Wharton and from your experience of what
12 that means?

13 A. My understanding of this is that all of the
14 accounts receivables that are generated from the Remarkable
15 Healthcare facilities remain the property of Remarkable
16 Healthcare for us to use if we have to get a loan such as the
17 one that we have with Alleon. Therefore, the collateral
18 remains in tact. Josh Kilgore, who is our landlord,
19 understands this. He's tried to explain this.

20 MR. BUTLER: Objection. Objection.

21 A. Every skilled owner -- every skilled owner in
22 Texas --

23 THE COURT: Hold on. There's an -- there's an
24 objection pending.

25 MS. BOYDSTON: Hold on. Hold on, Jon.

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1 THE WITNESS: I'm sorry.

2 THE COURT: Stop speaking over people.

3 THE WITNESS: So sorry.

4 THE COURT: Who's objecting and what's the
5 basis?

6 MR. BUTLER: Lynn Butler, Your Honor, hearsay.

7 THE COURT: Thank you.

8 MR. BUTLER: He's testifying what the landlord
9 understands.

10 THE COURT: Objection sustained.

11 Q. So is it your understanding that Alleon has a first
12 lien security interest in all of the debtors' receivables, no
13 matter the QIPP Program?

14 A. Everything that they have collateralized right now
15 remains in tact regardless of the Wes Wharton agreement and
16 in the Wes Wharton agreement which supports that, just like
17 every other skilled nursing facility in the United States
18 that have entered the QIPP Program with a hospital partner.
19 And all of their lenders understand this, except for our's.
20 And the reason that's important --

21 MR. BUTLER: Objection, Your Honor.

22 A. -- is because that is their reason --

23 Q. Okay, Jon.

24 THE COURT: Okay, objection sustained.

25 MR. BUTLER: Yeah.

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1 MS. BOYDSTON: I didn't hear what the
2 objection is, I'm sorry.

3 MR. BUTLER: Nonresponsive, repetitive,
4 irrelevant.

5 THE COURT: Objection is sustained.

6 Q. Okay. Okay. Mr. McPike, can you move to page 31,
7 paragraph 16.1?

8 A. Yes.

9 Q. Do you see the highlighted portion?

10 A. Yes.

11 Q. Can you read that, please?

12 A. No consent shall be required for manager to grant a
13 security interest in this agreement to a lender.

14 Q. Did you discuss this with Wes Wharton about Alleon?

15 A. Yes. And they assured me -- I'm sorry, go ahead.

16 Q. What -- what did you take from that, that meeting?
17 What is your understanding from that meeting with Wes Wharton
18 about Alleon's position with the security interest?

19 A. That the accounts receivable of the companies
20 remain secure for Alleon's cash collateral and for their --
21 the collateral used to secure their line of credit remains in
22 tact.

23 MR. BUTLER: Your Honor, objection --
24 objection.

25 THE COURT: Objection -- objection is --

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1 objection is sustained.

2 Ms. Boydston --

3 MS. BOYDSTON: Yes.

4 THE COURT: -- his understanding is
5 irrelevant.

6 MS. BOYDSTON: Your Honor, I don't --

7 THE COURT: Unless you can tell me there's
8 some reason his understanding is relevant, it is not
9 relevant. So I'm allowing you some leeway, but this --
10 that's all you're testifying -- all he's testifying to so
11 far. And his understanding is not relevant to any
12 determination this Court needs to make.

13 MS. BOYDSTON: I understand that, Your Honor.
14 And I'm -- on the 19th you said we had to look at a document
15 and the final document wasn't there. I have now -- we've now
16 uploaded the document. The document speaks for itself. And
17 there it plainly states that there's --

18 THE COURT: Well, you can make whatever legal
19 argument -- okay. You can make whatever legal argument you
20 want to make from it. But I do not need this witness to be
21 testifying to this Court about what he thinks it means.

22 MS. BOYDSTON: Okay. I did want to get it
23 into evidence. I'm offering Exhibit 7 into evidence.

24 THE COURT: Exhibit 7. Any objections?

25 MR. BUTLER: Hold on, Your Honor. Let me pull

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1 up the debtors' -- if you can give me one second. Exhibit 7,
2 executed -- no objection to the admission. Objection to the
3 highlight. But whatever it says what it says.

4 THE COURT: Okay. Well, the highlights just
5 highlight language, right? The objection --

6 MR. BUTLER: Sure.

7 THE COURT: -- you don't object to the -- to
8 the exhibit. So Exhibit 7 then is admitted.

9 MR. BUTLER: Thank you, Your Honor.

10 THE COURT: Thank you.

11 MS. BOYDSTON: Thank you.

12 Q. And, Mr. McPike, can you pull up Exhibit Number 9?

13 A. Yes.

14 MS. BOYDSTON: Your Honor, this is -- because
15 this is a telephonic hearing, I provided an email to
16 everybody the actual link to this official Texas HHS QIPP
17 website because I can't pull it up for the Court. Our office
18 screenshot it, the first page of it.

19 Q. But, Mr. McPike, can you look at Exhibit 9?

20 A. Yes.

21 Q. Have you been to this website before when you were
22 investigating the QIPP Program?

23 A. Yes.

24 THE COURT: What exactly is Exhibit 9?

25 MS. BOYDSTON: Exhibit 9 is a screenshot of

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1 the QIPP Program website. And the link is in the -- is in
2 the email that I sent, because this is not a virtual hearing
3 where I could pull it up to verify that this is the official
4 website.

5 THE COURT: So it's just the screenshot that
6 you're putting into evidence?

7 MS. BOYDSTON: Well, I'm about to ask him a
8 question about it, yes.

9 THE COURT: Okay. Well, you can ask him
10 questions about it. But I'm not quite sure what the -- well,
11 I'll hear what the question is, I guess. But --

12 Q. Mr. McPike --

13 MS. BOYDSTON: Sorry, Your Honor.

14 THE COURT: You may proceed. You may proceed.

15 Q. Mr. McPike, are you looking at Exhibit 9?

16 A. Yes.

17 Q. Earlier today you testified that the QIPP Program
18 receivables that -- I'm sorry, the QIPP Program only accounts
19 for Medicaid receivables.

20 A. That's my understanding.

21 Q. And what is -- what is your understanding based off
22 of?

23 A. Just the research that I've done and the other
24 owners that I've talked to before we made the decision to go
25 into QIPP.

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1 Q. Did you use this website, the official State of
2 Texas Health & Human Services website when you were
3 researching --

4 A. Yes.

5 Q. -- about the QIPP?

6 A. Yes.

7 Q. Is this page that I screenshotted here one of --
8 the main page of the QIPP Program?

9 A. Per Texas Health & Human Services, yes.

10 Q. Can you --

11 MR. BUTLER: Objection; relevance, Your Honor.

12 Q. Can you read what's --

13 MR. BUTLER: Your Honor, relevance.

14 THE COURT: What is the relevance of this
15 (inaudible word due to shuffling of papers)?

16 MS. BOYDSTON: This is to provide evidence to
17 back up my argument and Mr. McPike's statement to the Court
18 that the only portion of the QIPP -- the only portion of the
19 proceeds under receivables that are affected by the QIPP are
20 the Medicaid portion. Just so you're not just taking our
21 word for it, so there's actual evidence.

22 THE COURT: There's actual evidence of --
23 explain that to me one more time.

24 MS. BOYDSTON: So we are disputing, because of
25 our argument, that Alleon has the information incorrect.

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1 That they believe that they do not have their -- their lien
2 on any of the receivables. We have already -- I have already
3 in my argument explained that the QIPP only affects Medicaid
4 receivables and this website, which is a Texas Health & Human
5 Services official website about the QIPP Program clearly
6 shows that it's only for Medicaid Managed Care Program. And
7 it doesn't affect any others at all. And I want to be clear
8 that it --

9 THE COURT: Okay.

10 MS. BOYDSTON: -- is not --

11 MR. BUTLER: Your Honor --

12 THE COURT: That's a --

13 MR. BUTLER: -- if I could speak?

14 THE COURT: Yes.

15 MR. BUTLER: And, Your Honor, I'm -- if you
16 look at the front page of their agreement that was entered
17 into evidence, it says that this is a sub-lease agreement and
18 operations transfer of all of the operations at the facility.
19 The -- all the total net revenue, as we went through on
20 Tuesday, all net revenue -- it doesn't -- there's no
21 exclusion of other revenue. And I wish we had Wes Wharton
22 here, I really, really do, because the agreement speaks for
23 itself. Every dollar generated by operations at that
24 facility are covered by the agreement.

25 I would be more than happy if I could stay -- say today

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1 that we have a lien on everything post-March 1st and Wes
2 Wharton agrees to that. That completely colors this a
3 different way. But the agreement defines things. And
4 facility, the facility -- Remarkable is a tenant. The
5 facility is defined as the real estate, the location. And I
6 think Mr. Carruth would probably -- his client would probably
7 get mad if you allowed a mortgage to be placed on that
8 facility.

9 MS. BOYDSTON: Objection, Your Honor. I
10 mean -- objection. Objection --

11 THE COURT: Stop both of you.

12 MS. BOYDSTON: -- argument.

13 THE COURT: Okay. Stop. Stop. Stop. Stop,
14 both of you. Okay.

15 You all are making legal arguments about what the
16 agreement says and does not say, okay. Okay. And clearly
17 you all have a difference of opinion about what the agreement
18 does and does not say. But I don't understand what's the
19 relevance of that for purposes of today? Whether -- whether
20 Alleon got it right or wrong, they -- they have refused to
21 fund. Okay. So now what?

22 MS. BOYDSTON: The -- the relevance, Your
23 Honor, is that we are asking for sanctions because they are
24 acting retaliatory because they do not understand this.
25 Because they got mad that they -- that the debtors entered

1 into the QIPP Program, they have --

2 THE COURT: I understand.

3 MS. BOYDSTON: -- 100 --

4 THE COURT: I understand your position, okay.

5 I understand your position. My question is, what is -- what
6 is it that they are obligated to do that they didn't do under
7 your agreement that I can enforce? What is this,
8 quote/unquote, tension for? For their misunderstanding?

9 MS. BOYDSTON: It's for -- it's for misleading
10 the Court. It's for putting themselves ahead of everybody.
11 It's for retaliating against the debtors. It is for bad
12 faith, for bad conduct. It is -- it is for all of the things
13 that they're doing that they're doing in retaliation. They
14 are not doing it because they are in their right to do it.
15 They're doing it because of retaliation. They do not
16 understand. They are putting the life and safety of patients
17 at risk because they do not understand this document and they
18 are retaliating against the McPike's. They said to you in
19 their opening --

20 THE COURT: Okay. Hold on. And you think you
21 can get all of that for a motion for sanctions?

22 MS. BOYDSTON: Yes. Yes, Your Honor, I do.
23 Yes. Under 105, yes. I -- I do. The Supreme Court -- I can
24 make my argument now, or I can wait until the end.

25 THE COURT: No. I'll --

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1 MS. BOYDSTON: Yes, Your Honor.

2 THE COURT: -- I'll hear it. I'll hear your
3 oral -- I'll hear your arguments at the end. I just want to
4 understand where you're headed. So you're going to provide
5 me with evidence about why it is that Alleon got it wrong.
6 But that's a legal question, right? So whether they got it
7 right or wrong is a legal question as to whatever these
8 documents say, whatever the agreements are, whatever the law
9 is about QIPP, right?

10 MS. BOYDSTON: Yes. I guess it is -- yes, it
11 is a legal argument.

12 THE COURT: Okay. Then I don't know what the
13 factual basis for it is. I mean, I understand both of you
14 have a difference of opinion about the law and what the
15 agreement is. But I'll hear you at closing. I don't think I
16 need any further evidence from this particular witness about
17 why it is Alleon got it wrong.

18 MS. BOYDSTON: Okay.

19 THE COURT: So why don't you move it along.

20 MS. BOYDSTON: Okay. I'll move it along.

21 Q. Mr. -- Mr. McPike, can you -- can you open Exhibit
22 Number 2?

23 A. Yes.

24 Q. What is Exhibit Number 2?

25 A. Okay. Exhibit Number 2 is the cash that has been

1 swept from our Regions deposit accounts to Alleon February

2 29th --

3 Q. And --

4 A. -- to March 1st.

5 Q. -- the (inaudible word due to speaking as the same
6 time as the witness)?

7 A. Yes.

8 Q. And what is the total at the bottom?

9 A. \$1,072,045.91.

10 MS. BOYDSTON: Your Honor, I admit this into
11 evidence as the number that they are holding.

12 MR. BUTLER: Your Honor, one, foundation.
13 Two, and I apologize, I can't open this pdf for some reason
14 on my laptop. The -- and I'm trying, I swear I'm trying.

15 But as far as foundation, where did it come from? The
16 source documentation. How was it created? All of that kind
17 of stuff.

18 THE COURT: Okay. I'm going to sustain the
19 objection on foundational grounds. But if you can't open the
20 document, I'm not sure how --

21 MR. BUTLER: I know, Your Honor.

22 THE COURT: -- we're going to do this.

23 MR. BUTLER: Believe me, I'm panicking on --
24 I'm panicking on what's next.

25 MS. BOYDSTON: This was also filed on the

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1 docket, which I believe you filed a notice -- a notice for.

2 MR. BUTLER: I'll keep trying, Your Honor.

3 They can go on.

4 THE COURT: Okay. What's the docket number?

5 MS. BOYDSTON: It is docket number -- docket
6 number 21.

7 THE COURT: Okay.

8 Mr. Butler, perhaps you can look there.

9 MS. BOYDSTON: Docket number 21-1, Exhibit 2.

10 If Alleon wants to stipulate to the number being 1,000
11 (sic) 72,000 \$45.92 since March 1st, then that's fine. But
12 that's all this is for.

13 MR. BUTLER: Absolutely not, Your Honor.

14 THE COURT: It's what number?

15 MS. BOYDSTON: 1,000 72 -- \$1,072,045.91.

16 THE COURT: Okay.

17 Q. Mr. McPike, what did you create this document from?

18 A. Directly from the wire transfers to Alleon from the
19 Regions bank account. The I Treasury screen.

20 MS. BOYDSTON: Again, I -- I would like to
21 offer this into evidence. All it is is showing every single
22 one of the wire transfers and the dates that the wire
23 transfers -- that is it.

24 THE COURT: Mr. Butler.

25 MR. BUTLER: Sorry, Your Honor. I

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1 (indecipherable two words).

2 Your Honor, normally -- my client is trying to verify
3 right now by text, but normally we would put in the source
4 documentation that make up the actual charge. They're
5 looking at it. And I will -- if you -- if the Court will
6 indulge me, we can continue to go on. But as soon as my --
7 my client responds, I'll be right there with you and I'll
8 interrupt and let you know.

9 THE COURT: All right. Thank you.

10 So I'll defer ruling on the admission of Exhibit 2
11 until Alleon has sufficient time to verify the numbers for
12 themselves.

13 MR. BUTLER: Thank you, Your Honor.

14 THE COURT: Thank you.

15 Q. Mr. McPike, can you pull up Exhibit Number 11?

16 A. Yes, ma'am.

17 Q. What is Exhibit Number 11?

18 A. This is the payroll register for today's payroll.

19 Q. Can you please inform the Court who created this
20 document?

21 A. It was created by our financial team and payroll
22 staff.

23 Q. And what -- why are there only 385 employees listed
24 on this -- 384?

25 A. Yeah. There are more than 384 employees receiving

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1 paychecks this pay period.

2 Q. What is -- can you please open Exhibit Number 12?

3 A. Yes.

4 Yes, ma'am.

5 Q. Never mind. Never mind about Exhibit Number 12.

6 (Indecipherable statement). Go back to Exhibit Number 11.

7 A. Okay.

8 Q. The number on the bottom, the third column is
9 582,000. Where is -- what makes up the other portion of the
10 600,000 that you need from the Court today?

11 A. Certainly. So to get the total payroll amount,
12 including payroll taxes, you have to add the second, third,
13 fourth, and fifth columns. The 582,000, that's the actual
14 gross pay of the actual paycheck. And then you have to add
15 in the taxes and that's where you get the total number. So
16 you have to add the four columns to the right of the \$582,000
17 to get the total payroll including taxes and the amount
18 that's withheld for benefits.

19 Q. And can you remind the Court what that number is
20 again?

21 A. Yes, I can. It is \$635,679.28.

22 MS. BOYDSTON: The debtors would like to offer
23 Exhibit 11 for the wage motion.

24 THE COURT: Any objections?

25 MR. BUTLER: Say it one more time, Your Honor.

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1 I'm sorry.

2 No, we don't.

3 Your Honor, we -- I do have that financial information,
4 if you want me to provide it to you.

5 THE COURT: Okay.

6 MR. BUTLER: From March 1st -- from March 1st
7 Alleon has received a gross amount from all pre-petition
8 account receivables of \$1,072,045.91. But of that amount,
9 \$120,185.41 was returned yesterday through our communications
10 with Regions.

11 THE COURT: All right. So Exhibit 21 -- I'm
12 sorry. Exhibit 2 is admitted, because that's consistent with
13 your numbers.

14 Thank you.

15 MR. BUTLER: Okay. Thank you, Your Honor.
16 Sorry. I just hadn't had time to get that.

17 THE COURT: Thank you.

18 And then Exhibit 7, that is being offered? I'm sorry,
19 Exhibit -- what number is the exhibit that's being offered?

20 MS. BOYDSTON: Exhibit 11, 11 is --

21 THE COURT: 11, okay, hold on.

22 Exhibit 11, the payroll register. Any objections to
23 that?

24 MR. BUTLER: No, sir -- no, ma'am, Your Honor.
25 I think that's probably relevant to the wage motion.

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1 THE COURT: Exhibit 11 is admitted.

2 MS. BOYDSTON: Thank you, Your Honor.

3 Q. Mr. McPike, what -- what happens today -- or excuse
4 me.

5 Mr. McPike, how did you learn that -- that the State of
6 Texas representatives were coming out to the State today --
7 coming out to the facilities today?

8 A. We had a surveyor in one of our facilities earlier
9 this week who said she would be back on Friday to make sure
10 that paychecks were handed out because there was a concern at
11 all four locations.

12 Q. And when did you receive that notice?

13 A. I believe that was yesterday.

14 Q. Each time that Alleon has swept these funds, have
15 you been given any notice that they were sweeping these
16 funds?

17 Let me rephrase that. Let me rephrase that.

18 Earlier you stated that Alleon sweeps every day and
19 then usually they give the money back to you; is that -- is
20 that a correct understanding of what you -- you testified to?

21 A. Yes. So typically they -- the funds are swept
22 automatically from Regions to Alleon every day. And then we
23 would make a request for return of cash and they pay
24 themselves according to the agreement between Alleon and
25 Remarkable Healthcare. And then they return, typically,

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1 prior to March 1st return cash for use and operation.

2 Q. What -- starting on March 1st, did you start
3 requesting return of funds every day like normal?

4 A. Yes.

5 Q. And did Alleon return any of the funds upon your
6 request?

7 A. No.

8 Q. Did they provide any documentation or reason why?

9 A. They -- the only -- the only notice we received was
10 an email from their counsel stating they would no longer be
11 returning any cash collections to Remarkable.

12 Q. Did they say why?

13 A. Because they believe that their cash collateral has
14 been given to Wes Wharton, which is incorrect. So they have
15 violated our agreement with them because they don't
16 understand the agreement with Wes Wharton.

17 MR. BUTLER: Your Honor, objection; calls for
18 a legal conclusion.

19 THE COURT: Sustained.

20 Q. If -- if Alleon had not been sweeping and keeping
21 each of the -- each of the -- the cash collections since
22 March 1st, would the debtors be able to pay their payroll?

23 A. Absolutely. The companies have seen an increase in
24 our collections in January, February, and so far in March
25 that they're holding. And the company's very financial

1 viable right now. The only thing that's causing us to
2 struggle is this issue with not giving our cash collections
3 back.

4 Q. Okay. Thank you. Thank you, Mr. McPike.

5 MS. BOYDSTON: Pass the witness.

6 THE COURT: Okay. Cross?

7 MR. BUTLER: Your Honor, if we're -- if we're
8 on the wage motion, we have no objection to it. I mean, and
9 if we're on joint administration, we have no objection. If
10 we're on the sanctions, the -- I don't know if I even have a
11 question for him, Your Honor. I already -- if the Court will
12 take judicial notice of the testimony that was given last
13 Tuesday, I don't think I have any questions for him.

14 THE COURT: Any objection to the Court taking
15 judicial notice of the -- I guess it's not judicial notice.
16 You're asking the Court to apply the evidence presented at
17 the prior hearing in the prior case to also apply here?

18 MR. BUTLER: You're -- you're correct, Your
19 Honor. I'm sorry. No, you stated it correctly.

20 MS. BOYDSTON: No objection.

21 THE COURT: Okay. So -- all right. So
22 ordered.

23 So you have no cross for this witness?

24 MR. BUTLER: No, not at all, Your Honor.

25 THE COURT: Okay. Okay. Does anyone else

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1 have cross for this witness?

2 MR. CARRUTH: Yes, Your Honor, just briefly.

3 Jeff Carruth for the landlords.

4 THE COURT: Yes.

5 MR. CARRUTH: Thank you.

6 CROSS-EXAMINATION

7 BY MR. CARRUTH:

8 Q. Mr. McPike, of the 635,679 to be paid out in the
9 first payroll, how much of that is going to go to yourself
10 and other family members?

11 A. I don't have that number. But my -- an estimate of
12 Laurie Beth's salary, I believe is around \$8,000 off the top
13 of my head and mine is typically somewhere around 5 or 6,000
14 a paycheck.

15 Q. Okay. Do you have any issue with for this interim
16 payroll foregoing any of the salary so that the employees
17 will get paid before yourselves?

18 A. We always hold our pay until all of our employees
19 are paid.

20 Q. I understand. But on this particular payroll, are
21 you going to segregate or put your salary behind all of the
22 other employees?

23 A. Yes, that's correct. Just like we do every pay
24 period.

25 Q. And that would go for you, yourself, and any other

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1 family member?

2 A. That would go for Laurie Beth and I specifically.

3 MR. CARRUTH: Pass the witness. Thank you.

4 THE COURT: Any other cross of this witness?

5 All right. The witness is excused. Any other evidence
6 you wish to present, Ms. Boydston?

7 MS. BOYDSTON: No, Your Honor.

8 THE COURT: Okay. Any evidence any other
9 party wishes to present?

10 MR. BUTLER: Your Honor, Lynn Butler.

11 Could I very quickly and succinctly put on Leon
12 Chernyavsky of Alleon Capital?

13 THE COURT: All right. Let's swear the
14 witness in.

15 (The witness was sworn by the courtroom deputy.)

16 LEON CHERNYAVSKY

17 The witness, having been duly sworn to tell the truth,
18 testified on his oath as follows:

19 DIRECT EXAMINATION

20 BY MR. BUTLER:

21 Q. Mr. Chernyavsky, when did Remarkable -- the
22 Remarkable entities become in default of their agreement with
23 Alleon Capital?

24 A. In May 2023.

25 Q. And that was before the first bank -- the second

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1 bankruptcy?

2 A. That was before the second bankruptcy.

3 Q. Okay. And were they still in default upon the
4 dismissal of the bankruptcy?

5 A. Yes, they were.

6 Q. Okay. And did you continue to fund the debtor up
7 to February 29th?

8 A. Yes, we did.

9 Q. Okay. And the money that you have collected since
10 March 1st, does that money represent all -- only pre-petition
11 receivables?

12 A. That is correct.

13 Q. Okay. When were you notified that there was a
14 sweep on the Regions account yesterday?

15 A. Yesterday when -- some time midday.

16 Q. Okay. And what did you do upon learning of that?

17 A. I called my counsel immediately and returned the
18 money back.

19 Q. Okay. So your testimony is that Alleon Capital has
20 reversed or re-wired that money back in the debtor accounts?

21 A. That's correct. We have confirmation numbers to
22 prove it.

23 Q. Okay. Thank you.

24 And -- and the -- has there been any offer made to
25 Alleon Capital for adequate protection for new financing

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1 going forward in this new case, the third case?

2 A. No, none.

3 MR. BUTLER: Pass the -- pass the witness,
4 Your Honor.

5 THE COURT: Okay.

6 Cross?

7 MS. BOYDSTON: This is Liz Boydston for the
8 debtors.

9 CROSS-EXAMINATION

10 BY MS. BOYDSTON:

11 Q. Mr. Chernyavsky, are you -- did you just testify
12 that your -- your counsel did not give you either of the
13 offers that the debtors made to you?

14 A. We did not receive any offers.

15 Q. So your testimony right now is that Ms. Klein did
16 not tell you about my offer immediately after the March 19th
17 hearing on cash collateral?

18 MR. BUTLER: Your Honor, objection. Other
19 than the attorney/client privilege issue that's (inaudible
20 few words due to audio cutting out).

21 MS. BOYDSTON: I missed -- I missed --

22 THE COURT: I'm sorry --

23 MS. BOYDSTON: I didn't hear what your
24 objection is.

25 MR. BUTLER: Invading the attorney/client

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1 privilege, asked and answered.

2 THE COURT: Objection sustained.

3 Q. Are you aware, Mr. Chernyavsky, that the debtors
4 have made a written offer and an oral offer to your counsel
5 regarding cash collateral?

6 A. No.

7 MS. BOYDSTON: Your Honor, I would like to --
8 I guess I have to put in impeachment evidence, but I don't
9 have a virtual screen to do that.

10 THE COURT: Okay. The fact that you offered
11 pre-petition -- what's -- okay. What's the relevance that
12 you -- you want to put in evidence that you made an offer of
13 adequate protection prior to the case being filed?

14 MS. BOYDSTON: No.

15 THE COURT: Is that what I'm assuming?

16 MS. BOYDSTON: No. If I may -- no, Your
17 Honor.

18 THE COURT: Okay. Hold on.

19 And the relevance of that --

20 MS. BOYDSTON: Mr. Butler just --

21 THE COURT: No. That's not what --

22 MS. BOYDSTON: What?

23 THE COURT: Well, I --

24 MS. BOYDSTON: I apologize, Your Honor.

25 THE COURT: -- understand he asked

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1 Mr. Chernyavsky if an offer of adequate protection has been
2 made and I understand he said, no. But, again, I'm not sure
3 what's the relevance of that.

4 MS. BOYDSTON: Your Honor, it goes to
5 impeachment. It goes to just everything about what Alleon is
6 doing is based on either mistakes, misrepresentation, or just
7 not having the information. How is it that we're standing
8 here today with being told, yes, we can -- yes, we can pay
9 our employees, but go find the cash when we have asked for
10 it. We have made offers for adequate protection. And we're
11 being -- and you are being told, no, we haven't. And we
12 have -- I've done it in writing. I've done it orally. I've
13 put it in my motion. I put it -- we put it in our
14 declaration. We cannot understand what Alleon is doing here.
15 And this is the reasons why we're asking them to be
16 sanctioned. They are not acting appropriately here. They
17 simply just do not care about the patients' safety. They
18 just want to crush this debtor. That is what they want to
19 do. And they should be sanctioned for their actions.

20 How is it appropriate that I've given two different
21 attorneys two different offers and neither offer was shared
22 with their client? Their client who's holding more than a
23 million dollars of the debtors' cash.

24 THE COURT: Well, is -- are they holding more
25 than a million dollars, or did they sweep more than a million

1 dollars?

2 MS. BOYDSTON: They swept and are holding more
3 than a million dollars.

4 THE WITNESS: No, we're not.

5 MR. BUTLER: Leon, don't -- I mean,
6 Mr. Chernyavsky, don't -- don't say anything unless asked a
7 question. I'm sorry --

8 THE COURT: Okay. All right. I understand
9 your position. But I don't think I -- I don't think I need
10 any evidence at this point about whether an offer of adequate
11 protection was made or not. When we get to the adequate
12 protection issue, we'll take that up. But I understand your
13 position. Okay.

14 Now, anything further for this witness?

15 MS. BOYDSTON: Yes.

16 Q. Mr. Chernyavsky, isn't it true that the only reason
17 that the debtors got put in default was because Alleon
18 changed the borrowing base calculation?

19 A. There was an amendment that was made in, I
20 believe -- I don't recall, but early on in our relationship
21 where we changed the borrowing base calculations and
22 Remarkable agreed to it. And the borrowers were in formula
23 until May of 2023.

24 Q. Isn't it true that when you say the borrower signed
25 it, or they agreed to it, it's because Alleon refused to give

1 payroll unless the debtors signed that borrowing base
2 amendment?

3 A. No, that amendment was done --

4 MR. BUTLER: Hold on. What time period are we
5 talking about?

6 MS. BOYDSTON: We're talking about March of
7 2023.

8 A. Can you repeat your question, please?

9 Q. Isn't it true that in March of 2023 when Alleon
10 changed the borrowing base calculation, Alleon forced the
11 debtors to sign the agreement to change the borrowing base by
12 withholding payroll?

13 MR. BUTLER: Your Honor, objection. This is
14 outside the direct testimony. And the relevance I'm not sure
15 either.

16 THE COURT: Objection sustained.

17 MS. BOYDSTON: I'm -- I would like to respond
18 to that. That is not -- that is not outside of it. He
19 literally just said that there was a borrowing base change
20 and that it was agreed to. And my question goes exactly to
21 why it was, quote/unquote, agreed to.

22 THE COURT: Again, how does a borrowing base
23 changing have to do with anything before the Court today?

24 MS. BOYDSTON: Because but for that forced
25 borrowing base changing, the debtor would not have been in

1 default. All of this goes forward from what Alleon continues
2 to do to the debtors, to force the debtors into a (inaudible
3 word). Every --

4 THE COURT: So you're disputing whether you --
5 okay, hold on. So you're disputing whether you were ever in
6 default and that Alleon was somehow in violation of your
7 agreements and -- because there was no default and,
8 therefore, they had an obligation to fund and they have not
9 funded; is that correct?

10 MS. BOYDSTON: I -- sort of, yes. Yes. They
11 have an obligation to fund. Yes, Your Honor. But, yes.
12 They had the obligation to fund. And the March 1st --

13 THE COURT: Okay. And from --

14 MS. BOYDSTON: 20 --

15 THE COURT: -- what evidence do I have to
16 conclude that they had an obligation to fund?

17 MS. BOYDSTON: So in the Exhibit Number 1 --

18 THE COURT: Okay.

19 MS. BOYDSTON: -- which is the declaration
20 which was filed on the docket at docket number 4.

21 THE COURT: Okay. I don't -- was it
22 somehow -- what is the exhibit number? It wasn't in your
23 email, right, that you -- where you emailed all of the
24 exhibits to?

25 MS. BOYDSTON: It was.

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1 THE COURT: It was?

2 MS. BOYDSTON: Yeah, it was in the zip folder
3 because the exhibits are very large. It's got the security
4 agreement, the loan agreement. It's got every single thing
5 in it.

6 THE COURT: Okay. Okay, I see. All right.
7 So in the declaration --

8 MS. BOYDSTON: The declaration --

9 THE COURT: -- there's something about it
10 there? Okay.

11 MS. BOYDSTON: Yes.

12 THE COURT: So what are you relying on
13 exactly?

14 MS. BOYDSTON: I'm relying on the borrowing
15 base --

16 THE COURT: Which exhibit? Which exhibit?
17 Which page? Which number?

18 MS. BOYDSTON: So page -- on the -- on the
19 declaration itself, which is the same declaration that was
20 admitted on March 19th, which was admitted by the Court and
21 which this Court has just applied to here, to this case, and
22 then filed again with a new title. It's paragraph --

23 MR. BUTLER: Actually, Your Honor, I think
24 you -- I think you reserved your ruling on evidence to give
25 us time to look at the emails. Since the case was dismissed,

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1 I will admit --

2 THE COURT: And you haven't looked at it yet;
3 is that right?

4 MR. BUTLER: I --

5 THE COURT: Okay. Well --

6 MR. BUTLER: Yes, ma'am.

7 THE COURT: -- here's what we're going -- hold
8 on. Here's what we're going to do. We're going to take a
9 recess. As you all know, I am traveling and I don't have
10 that much time before I need to get on a flight in a few
11 hours. And so I'm going to give you all time to visit, to
12 look at the exhibits, and to visit. It seems to me I don't
13 know whether you all have a misunderstanding or not. I don't
14 know. But what I do know is now that it's here in front of
15 me, we can certainly provide protective orders and otherwise
16 between the parties. And what I want to understand is for
17 purposes of today and what needs to be done today for the
18 care of the patients, okay, what has to be done today and can
19 you all agree to an agreement? And that may involve, among
20 other things, getting Wes Wharton in the discussion.

21 It seems to me whenever there's an issue of potential
22 priming of liens or otherwise somehow adversely affecting the
23 rights of an existing creditor you usually wind up having
24 some kind of three-way or two-way agreements between the
25 potential parties. I don't see anything right here. It just

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1 seems like you all are talking at each other as opposed to
2 with each other. But I want you all to actually visit about
3 what you're going to do today to avoid harm to the credit --
4 to the parties who are not before the Court today, the ones
5 who are the most vulnerable and who may be affected, which
6 are the patients. Okay.

7 After we get past today, we will have a more fulsome
8 hearing in the very near future. But I need -- I need you
9 all to discuss that and I need you to limit the issues for
10 today about that issue. Okay. Because that's the only
11 emergency that justifies a swift ruling from the Court.

12 MR. BUTLER: Your Honor, Alleon completely
13 understands. But we are going to need Wes Wharton.

14 THE COURT: I understand.

15 I'm going to give you -- I'm going to continue this for
16 today until 1:30, okay.

17 MS. BOYDSTON: Your Honor, this is --

18 THE COURT: At which time we will have --

19 MS. BOYDSTON: I'm sorry. Go ahead.

20 THE COURT: At which time we will have a brief
21 hearing and then we may have to continue it until tonight.
22 But we're going to get it done today, at least the temporary
23 issues that need to be decided. Okay. But you all need to
24 have a visit.

25 MS. BOYDSTON: Your Honor, can I please

1 request that you ask for -- or instruct Ms. Milligan, or
2 something, to make sure that the facilities aren't taken when
3 paychecks aren't delivered at noon.

4 MS. MILLIGAN: Your Honor, this is Layla
5 Milligan on behalf of the Health & Human Services Commission.

6 I have not -- I have -- I was concerned with the
7 comment by Ms. Boydston this morning that the State is taking
8 over these facilities. That is not accurate. Health & Human
9 Services, the Texas Health & Human Services, at least I can
10 speak on their behalf, does not take over facilities in this
11 manner. They don't -- are not -- will not be taking over the
12 facilities. I don't know where that information came from.

13 But I -- and there may be inspectors onsite for different
14 reasons. But I've been assured, at least from two different
15 entities and my representative at HHSC that that's just not
16 something that happens and it isn't happening with these
17 facilities today. So I don't think that is something that
18 the Court needs to be concerned with. The operators are
19 clearly responsible for making sure patient care is
20 continued. But the State is not taking over any of these
21 facilities and that's just not something that happens. So I
22 just wanted to assure the Court and the parties of that.

23 THE COURT: Okay.

24 MS. MILLIGAN: Thank you so much.

25 THE COURT: Thank you.

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1 Okay. All right. Anything else before we recess?

2 MR. BUTLER: No, Your Honor, not from Alleon
3 Capital.

4 THE COURT: All right. We stand in recess
5 until 1:30. Thank you.

6 (Brief recess ensued.)

7 COURTROOM DEPUTY: Number 1, Remarkable
8 Healthcare of Carrollton, 24-40605; motion for joint
9 administration, motion for sanctions, and motion to pay
10 pre-petition salaries and wages. And, number two, Remarkable
11 Healthcare of Dallas, 24-40608; amended motion for joint
12 administration. Number three, Remarkable Healthcare of Fort
13 Worth, LP, 24-40610; amended motion for joint administration.
14 Number four, Remarkable Healthcare, LLC, 24-40611; amended
15 motion for joint administration. Number five, Remarkable
16 Healthcare of Seguin, 24-40612; amended motion for joint
17 administration.

18 THE COURT: All right. Appearances.

19 MS. BOYDSTON: Good afternoon, Your Honor.
20 Liz Boydston of Gutnicki on behalf of the debtors. I also
21 have Alexandria Rahn with me.

22 MS. KLEIN: Good afternoon, Your Honor. This
23 is Buffey Klein with Husch Blackwell on behalf of Alleon
24 Capital Partners.

25 MR. BUTLER: And, Your Honor, I apologize.

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1 This is Lynn Butler on behalf of Alleon Capital. I was on
2 mute.

3 MR. SALITORE: Your Honor, Marc Salitore for
4 the U.S. Trustee.

5 MS. THARPE: Your Honor, Whitney Tharpe --

6 MR. CARRUTH: Your Honor, Jeff Carruth -- go
7 ahead, Whitney.

8 MS. THARPE: Whitney Tharpe on behalf of
9 Health & Human Services. Ashley Benton is also here on
10 behalf of Health & Human Services.

11 MR. CARRUTH: Jeff Carruth on behalf of the
12 landlords. Also on the line is Randy Glen, also on behalf of
13 the landlords. Josh Kilgore will be joining us, also.

14 MS. MILLIGAN: Layla Milligan for the Texas
15 Health & Human Services Commission.

16 MR. KRIENKE: Trent Krienke for Wes Wharton
17 County Hospital District. Also on the line is David Mack,
18 CFO with n County Hospital District.

19 MR. KIN: Richard Kin --

20 THE COURT: All right. Where are we? All
21 right. Where are we now?

22 MS. BOYDSTON: Your Honor, this is Liz
23 Boydston for the debtors.

24 Unfortunately there is no agreement. Mr. Krienke, who
25 is on the line, counsel to Wes Wharton, he met with the

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1 parties and spent a good half hour trying to get Alleon
2 comfortable. Alleon's counsel says that they are not willing
3 to fund if the McPike's stay involved. That is their
4 position.

5 MS. KLEIN: Your Honor, this is Buffey Klein.
6 Just to intersect.

7 We did have an opportunity to meet with Mr. Krienke.
8 We had a very fruitful discussion. He has proposed a
9 structure that -- that I think my client is very interested
10 in pursuing. But as I explained to Ms. Boydston, the
11 timing -- the timing makes it difficult for us to get this
12 done today and to get the approval to make any advances
13 today. I think that's really the crux of it.

14 Obviously, you know, my client is very concerned with
15 going forward with the current management, as has been made
16 clear throughout the last few hearings before the Court. But
17 we're in a position where I think, Judge, there is -- there
18 is a (inaudible word), but it's a timing -- the timing is
19 not -- you know, we're not able to get it done today, I think
20 is the point of it.

21 MS. BOYDSTON: Your Honor, this is -- this is
22 Liz Boydston.

23 Alleon really can't claim surprise. The debtors
24 have -- the debtors have begged them daily since March 1st
25 and repeatedly told them this is going to happen. You heard

1 testimony from Mr. McPike on the 19th -- the hearing on the
2 19th that he tried hard to get Alleon and its counsel to meet
3 with Trent Krienke and they refused. I filed this original
4 motion for sanctions on March 14th, eight days ago when the
5 total amount swept by the -- Alleon was only \$462,000. That
6 put Alleon on notice that the debtors were requesting
7 disgorgement. And that disgorgement was going to be
8 necessary to pay today's payroll.

9 Alleon made the decision to continue sweeping daily and
10 daily and daily even after the March 19th hearing when
11 testimony was clear and has been admitted in this matter that
12 payroll had to be funded today. They cannot claim surprise.
13 We believe that keeping the business open as a going concern
14 is adequate protection for Alleon.

15 We did file the cash collateral motion over the break.
16 And we do make an oral request for use of cash collateral
17 over objection, because the (indecipherable two words)
18 testimony that's the best way to prevent diminution of value
19 to the lender is to keep the doors open, to maintain value in
20 a going concern. That's the best way that this lender can be
21 adequately protected. The lender has admitted in the prior
22 case that they are oversecured. Public policy, patient
23 safety, all of this goes in favor of forcing Alleon to
24 disgorge the payroll amount so the debtors can make payroll
25 today.

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1 I can put Mr. McPike back on the stand and talk about
2 the diminu -- what will happen if they cannot make payroll
3 today and what has happened in the last two hours since we
4 got off the hearing and everything that's happened since then
5 with their employees who were listening on this hearing.

6 MR. BUTLER: Your Honor, this is Lynn Butler.

7 They -- the -- our offer was in an immediate revocation
8 of Sub V and put in a Chapter 11 Trustee. We have no faith
9 in the McPike's. And then the receipt that they received
10 from yesterday, the 120, whatever they got today should
11 cover. It will give Alleon time to go to its lender and get
12 permission to over extend again. But it just -- that's the
13 best we can do. We're making the offer, it just cannot
14 involve the McPike's in any way, shape, or form.

15 MS. BOYDSTON: And, Your Honor, there's no way
16 \$120,000 -- which, by the way, we did reach out to Regions.
17 They did -- Alleon did refund it, but they didn't refund it
18 into an account that is accessible by the debtors. And so
19 Regions is trying to remedy that. And so even if we could
20 access it and this Court granted us the ability to use it,
21 \$120,000 will not keep our -- our employees. And we -- I've
22 already explained it to Mr. Butler that if they think that
23 this case can't even afford a Subchapter V, how the heck is
24 it going to afford a Chapter 11 with a Committee and with
25 monthly operating -- I mean quarterly operating fees and

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1 everything else that comes in with it? And Harney Partners
2 is a Chapter 11 Trustee is going to be exorbitantly
3 expensive. And they required Compass to come in. And we've
4 already heard testimony that Compass is extraordinarily
5 expensive to collect on. That is -- all that's going to do
6 is immediately turn this into a liquidation. That's all that
7 will do.

8 MR. BUTLER: Your Honor, it's already a
9 liquidation. Current management doesn't realize it. This is
10 a path forward to get a new operating company in there that
11 leaves Remarkable as a shell company with AR to collect. The
12 case is effectively over as an operating entity.

13 THE COURT: All right. Does anyone else wish
14 to be heard?

15 MR. SALITORE: Marc Salitore for the U.S.
16 Trustee, Your Honor.

17 THE COURT: You may proceed.

18 MR. SALITORE: Thank you. Just briefly.

19 At least the U.S. Trustee, what we understood
20 Mr. Butler to refer to with respect to the posture of the
21 case is currently in Subchapter V was noting the
22 differentiation between the removal of the
23 debtor-in-possession under 1185 as opposed to the appointment
24 of a Chapter 11 Trustee more conventionally seen under
25 Section 1104. At least that was how we interpreted it. And

1 we'd just remind the Court of that distinction.

2 Thank you.

3 THE COURT: Thank you.

4 MR. CARRUTH: Your Honor, Jeff Carruth on
5 behalf of the landlords.

6 We would be comfortable with a Trustee operating the
7 debtor.

8 Thank you.

9 THE COURT: All right. So nothing has changed
10 on the procedural posture. You're asking the Court to
11 require disgorgement as part of a sanctions order sanctioning
12 the creditor because the creditor allegedly is in breach of
13 your contract. Is that -- is that kind of where we are?

14 MS. BOYDSTON: No, Your Honor. We are not
15 saying that they're in breach of a contract. We're saying
16 that they are acting in bad faith and that they are
17 retaliating against Mr. McPike and Mrs. McPike because of the
18 fact that they entered the QIPP Program against the lender's,
19 I don't want to say order, they said, no. They refused to do
20 that.

21 This motion for sanctions is not based on any Rule 11.
22 We heard you loud and clear that you expected a Rule -- that
23 we couldn't bring up the agreement because of the fact that
24 there was no Rule 11 that was put down into -- into contract.
25 This is based on the bad faith of the lender, the statements

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1 that the lender made to you in January saying that they would
2 put patient safety first, and here they are not putting
3 patient safety first. They misled this Court into believing
4 that they would do that. They have continued to mislead this
5 Court into believing they would do that. And today we're
6 being told they -- they're willing to work -- they're willing
7 to help if the McPike's are out. But they can't fund. So
8 they only have \$120,000 they're willing to allow the debtors
9 to use and only if the McPike's are not in. That is not
10 negotiating in good faith. None of that -- nothing that
11 they're doing is in good faith. It is all retaliatory
12 because Mr. Chernyavsky got very mad at Mr. McPike. It is
13 bad faith. It's bad acts. It shouldn't be allowed. It's
14 not based on breach of a contract.

15 THE COURT: All right. Well, whether you're
16 calling it bad faith or not, at the end of the day the
17 procedural posture is incorrect.

18 Given the posture of this case and the motions that
19 were filed and the notices that were sent out on this motion,
20 where the Court has the (inaudible word) of the motion to
21 authorize payment of pre-petition wages, from what I
22 understand, none of the parties object other than to payments
23 to insiders, those being the McPike's and particularly any
24 family members.

25 So did I incorrectly state the position of the parties

1 with respect to the motion to pay post-petition wages?

2 MS. BOYDSTON: No, Your Honor.

3 THE COURT: All right. Under those

4 circumstances, the Court will grant the motion to pay

5 pre-petition wages, other than payment to any insiders,

6 specifically the McPike's or any family members. I'll set a

7 final hearing on this matter on April 2 at 1:30 p.m. to take

8 up final authorization to pay pre-petition wages,

9 specifically with respect to insiders. I'm just not prepared

10 to do that on this shortened notice at this point in time.

11 MS. BOYDSTON: Your Honor, can we get the

12 joint admin motion? All parties said that they would -- that

13 they did not object to that too?

14 THE COURT: I'm sorry, the joint what motion?

15 MS. BOYDSTON: The joint administration

16 motion.

17 THE COURT: Oh, yes. That's -- I was going to

18 go there next.

19 With respect to the joint administration motion, I

20 didn't see -- hear any objections to the joint

21 administration.

22 Does anybody disagree?

23 All right. So then the motion for joint administration

24 is granted.

25 MS. BOYDSTON: So, Your Honor, there's no

1 equitable relief what -- relief whatsoever --

2 THE COURT: I don't think I have the
3 authority.

4 MS. BOYDSTON: -- under 105?

5 THE COURT: I haven't seen any -- no. If
6 that's your only basis of sanctioning a creditor for,
7 quote/unquote, acting in bad faith pre-petition, I don't
8 believe I can grant that motion. The motion is denied.

9 So that's where we are. The parties can submit an
10 order consistent with that ruling.

11 Is there anything else we need to take up today?

12 MS. THARPE: Your Honor, this is Whitney
13 Tharpe with the U.S. Attorney's Office on behalf of Health &
14 Human Services.

15 We would just request -- we would just request that any
16 order includes the standard language protecting Health &
17 Human Services right to -- nothing can impair their
18 regulatory powers. And I don't -- I'm not sure if that will
19 be implicated in the order to pay pre-petition wages, or
20 post-petition wages. But we just wanted to make them aware
21 of that.

22 THE COURT: Well, if you want that, you file a
23 motion. I don't see that -- if you think 353 or 352 already
24 protects you, it protects you. If it doesn't, it doesn't.
25 But I'm not going to -- I don't have any issues with respect

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1 to regulatory powers before the Court today.

2 MS. THARPE: Okay. Thank you, Your Honor.

3 THE COURT: Okay. Anything further?

4 All right. Thank you. Parties are excused and we're

5 adjourned.

6 (End of Proceedings.)

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C E R T I F I C A T E

I, CINDY SUMNER, do hereby certify that the foregoing constitutes a full, true, and complete transcription of the proceedings as heretofore set forth in the above-captioned and numbered cause in typewriting before me.

/s/Cindy Sumner

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